

COMMISSIONERS APPROVAL

LUND *Bte*

THOMPSON *OK*

CHILCOTT *OK*

TAYLOR (Clerk & Recorder)

Date.....January 9, 2006

Members Commissioner Greg Chilcott
Commissioner Alan Thompson, and Commissioner Betty Lund

Minutes: Sally Fortino

The Board of County Commissioners met to fill expired positions on the Health Board and the Weed Board, terms running from January 1, 2006 through December 31, 2009. Commissioner Thompson moved to reappoint Roger DeHaan & John Swanson to the Health Board. Commissioner Lund seconded the motion, and all voted 'aye'.

The applicants for the Weed Board are: Diane Hackett, Lance Brown, Josette Hackett, and Tim Tackes. Commissioner Chilcott applauded the efforts of the fulltime employees of the Weed Department. There was discussion of the strengths and weaknesses of the individual applicants, applauding their commitment to community endeavor

Commissioner Thompson said that the employees of the Weed Department requested that those in place be reappointed. Commissioner Lund moved to reappoint Lance Brown and appoint Tim Tackes, and to send a letter to Josette, thanking her for time devoted to community service. Commissioner Thompson seconded the motion, and all voted 'aye'.

The Board of County Commissioners met with Marty Birkeneder, to update the Commissioners on the Project Safe Neighborhood project. Detective Pete Clarkson and Attorney Geoff Maher accompanied her. She stated that they have added a Faith-Based Component, which includes the Chaplain Liaison from the Sheriff's Office, and have placed Pete Clarkson on full-time duty. The transcriptionist has been changed to sixteen hours per week, or 40% status, and the intern is raised to half time from quarter time. Commissioner Chilcott asked about time devoted to travel. Marty said that attending a couple conferences per year is mandated. Commissioner Chilcott said the County is attempting to control mileage costs. Marty said it is required that they list their traveling in the manner demonstrated. The grant uses those figures to determine if they should opt for airfare.

Commissioner Lund referenced the video conferencing mentioned in the grant, and asked if it would serve in the arraignment process. Marty said they hoped to do both, and added

there was little to be done in the arraignment area right now. Commissioner Chilcott commented they should be able to interface with existing equipment. Marty said some equipment is moveable. Once the final draft is finished, she will bring it back to the Board of County Commissioners. Commissioner Chilcott stated they should visit with Skip or Jana to determine what benefit package is available. Marty will gather signatures and make the appropriate changes.

Geoff Mahar stated the assistance from Pete Clarkson has proved invaluable, as he has the ability to get needed information without making people uncomfortable. He is cognizant of the information needed. Geoff added interviews with victims and witnesses should be transcribed quickly, so the information can be in the hands of the investigators in a timely fashion. He said the grant would be terrific for these departments. Commissioner Thompson said he attended some training sessions, as did other County employees. He said he heard a victim speak about how the new equipment helped make her experience less harrowing. Marty spoke about a database creation item, which will automate and keep records time-current. It will change information in real time. Other components include an information database to provide information to the officer answering a call, to provide information to those rolling on a call for service. The data entry is almost a full-time task. Commissioner Lund asked if the issue of equipment compatibility had been discussed with Joe Frolich, I.T. Director. Marty said the system would be built to be compatible. Commissioner Thompson commented this is the continuation of a project that has already started. He asked where the money comes from. Marty said it comes from the Office on Violence against Women, a federal grant. Commissioner Lund asked if there is an administration fee. Marty said she and Wanda administer the grant, so an administration fee would not be appropriate, but she will check again. The rules of the grant state everyone involved has to be compensated. Commissioner Thompson made a motion, based on the information and it being a continuation of an ongoing project, that the Commissioners sign the amended OMB # 2005-X1070-MT-W, and execute it. Commissioner Lund seconded and all voted 'aye'.

Commissioner Lund moved to continue the meeting to Thursday, January 12, 2006 at 8:30 a.m. for signing of the STEP grant. Commissioner Thompson seconded the motion, and all voted 'aye'.

In other business, the Board of County Commissioners met with I.T. Services Director, Joe Frohlich, to discuss an Employee Action Form. He requested a raise for Rick Hanson, from \$11.14 to \$12.50. This would include a change of job description from PC Technician to Network Administrator. After discussion, Commissioner Chilcott commented that Rick must live up to the expectations of the new job description, and suggested a six-month probationary period. He added the impact on the Information Technology Department would be approximately \$3,000 per year.

Joe said Rick has taken the necessary Microsoft training, but has not yet taken the tests for certification. The training, which is not limited to Microsoft, costs approximately \$1,200 per person. Commissioner Chilcott said when the County invests in training, they expect follow-through for certification. Commissioner Lund said Rick came to the

county without advanced knowledge, and the County has paid for his training. Therefore it is important that Rick follow through on the certification.

Commissioner Thompson said the status change would be probationary. If the job title is changed, the individual must function within it or be returned to their previous status. Commissioner Chilcott directed Joe to give Rick a letter of acknowledgement of new the position, stating he must live up to the job description, get the training and certification. This is not to be a disciplinary letter. Joe asked for the date that the raise would take effect. Commissioner Chilcott said it would be retroactive to January 1, 2006.

In other business, the Board of County Commissioners met with Ken Senn, regarding an Irrevocable Letter of Credit versus Bonding for the subdivision he is developing on Grantsdale Road. Deputy County Attorney James McCubbin was also present. Ken said he understands the County is no longer accepting Irrevocable Letters of Credit on subdivisions. Commissioner Chilcott said they made the decision a year ago not to accept any more letters of credit. Ken said from the bank's perspective, they should have changed their letter to agree with the engineer's estimate, which was \$63,000 rather than the amount stated in their letter, which was \$43,000. Typically, letters of credit can work well; performance bonds can also work, and to not use a letter of credit based on one bad experience would be too bad.

Commissioner Chilcott stated the county has been badly burned by the use of letters of credit. Ken said the County wrote it; the bank he works for complied with what the County wanted. James said the Della Erickson project was a disaster from the beginning, and there was friction from the bank all along in the process. He stated the bank was 'prioritizing a relationship' over the letter of credit. The final plat was submitted without infrastructure in place. A bond and letter of credit should work the same way. Ken said Farmers' State Bank asked for a written claim on the letter of credit; and the stipulation that they would favor their customer is not so. We can't enforce a note without a claim. Verbiage from the County was for each item.

Jason asked, "what if the agreement that references the letter of credit had reference to the withdrawal request?" Ken said what was put in the letter is fine. James said he has worked to revise forms, for the sake of clarity. All banks have a universal form for a letter of credit. He stated the point is; the County had a bad experience, and the Commissioners need to determine if they want to take a letter of credit again.

Commissioner Chilcott asked the other Board Members if they want to take another look at the vague policy and determine the need to change it.

Commissioner Thompson said he has no problem, the statute asks for security and that the security be bound somehow. He would hope to keep some kind of discretion as the Board of County Commissioners look at individual projects, not a blanket statement that we will or won't; as some letters of credits may not be acceptable.

Commissioner Chilcott asked how long before James could generate some form or instrument to handle the situation. James said it would not be particularly complex, and should not take an inordinate amount of time. James said the Board of County Commissioners should look at each circumstance, as Commissioner Thompson said, because facts change. Commissioner Lund moved to accept a letter of credit from Ken Senn for the Grant's Meadows Subdivision, with concurrence of civil counsel to execute the form. Commissioner Chilcott stated he wants the form approved by civil counsel. James suggested the motion indicate the bank's name. Commissioner Lund restated the motion, substituting "Farmers' State Bank" for "Ken Senn". Commissioner Thompson seconded the motion and all voted 'aye'.

In other business, Terry Nelson met with the Board of County Commissioners for Langsley's Subdivision and subsequent amendment. Karen Hughes, Planning Department, and James McCubbin, Deputy County Attorney, were present. Terry stated the variance requested is for a 2-lot subdivision. The Langsleys live on one lot; Fawn Lane was requested to have no improvements. No additional improvements or right of way was to be done. The Planning Board recommended that some things be done; the Board of County Commissioners agreed. The motion was made to do nothing. Widen the road, ditches for runoff, 90-degree turn with cul-de-sac, dust abatement to be applied. The minutes agree with the proposal; the approval letter agrees.

The engineer clarified what was to be done. Then there was an amendment to the approval, which is a vast change: "Road to be reconstructed." Exceptions listed are the things that were approved earlier. Terry stated they are asking the Commissioners to repeal the amendment and return to what was originally approved.

Karen said there was a change of employees on the project. The staff person who wrote the plat decision is not the same employee who did the project. The Planning Department realizes that the Board of County Commissioners' intent was to approve. The memo was intended to clarify what the Board of County Commissioners intended. The basic issue is the road was to be built to minor road standards.

James said the written decision must be the same as the oral decision announced. All signed on the November 30th memo. The evidence to be considered is based on the memory of the verbal motion. Commissioner Chilcott said Terry indicated there was significant monetary consideration. Terry said he would have argued against this if you had ordered it. The cover material on the road has eroded, but has a good base. To build to County standards would require removing all base, and starting over. It would be like constructing a new road. James said you couldn't reconsider whatever decision was made. Remember as best you can what the original verbal motion was. Commissioner Thompson said he knows where the subdivision is and remembered the discussion as he read the minutes, but whether we said it should be built to County standards, he cannot remember. Commissioner Lund stated the variance states "to meet the two-lot standard, the road to remain in current condition." Rereading the memo shows it is not what we were talking about. It talked about fire trucks being able to turn around. Commissioner Chilcott said he remembers the discussion including paving, but cannot recall specifics of

the motion. He can't say it was specifically made in the motion. James asked the Board of County Commissioners if they remember reviewing the file when they read the memo. Commissioner Chilcott remembered that it was consistent with their discussion, but doesn't remember the motion. Commissioner Thompson said he couldn't remember; there is an underlined section; the subdivision met criteria; it was not a difficult subdivision. He looked at the variance request and the meeting notes; they conflict with the memo they signed. What the motion reflected is what the minutes say. James said Commissioner Lund has the best recollection. It looks like you shouldn't have sent the memo.

Commissioner Lund made a motion to rescind the memo, dated November 30, 2005, as a result of today's discussion. The conditions of final Commissioners' action will apply. Commissioner Thompson seconded the motion to rescind the memo from the Board of County Commissioners, regarding Sunnyside Orchard #1, Portion Block 4AP. All voted 'aye'. James noted the Commissioners have stopped making recordings of their meetings and if we had good equipment and utilized it, the recording device would have addressed this problem and it would help avoid litigation.

In other business, Terry Nelson met with the Board of County Commissioners to discuss boundary relocation. Nedra Taylor, Tena Miller, and Linda Beisel of Clerk and Recorder's office, Karen Hughes of the Planning Department, James McCubbin, Deputy County Attorney and Robert Smith, landowner, were present. Terry said he owns three acres, and is trying to purchase 5.5 acres from Mr. Smith, but the boundary change has been denied. He is not creating a building site, but will own 8.5 acres instead of three acres.

Karen said the reason for denial is the proposed adjustment to the boundaries would be a substantial change of lots, and it looked like an attempt to evade subdivision laws.

Linda said there are many subdivisions in the area, with relocation of boundaries and family transfers. She collected and reported that data to allow decision-makers to know the amount of activity in the area. She had no idea how many acres were proposed.

Robert Smith said the other transfers were gifts to the family, involving his own land. He takes exception to the wording of the letter of denial, which accuses Terry of being a crook. The Board of County Commissioners should review the letter and get a second opinion. James said there was mention of recent litigation, and both recent cases took the time to discuss views of boundary line relocation, and does not approve of boundary line exemptions. Creation of new lots is not acceptable. Commissioner Chilcott said the Planning Board did not sit in on this, and does not hear these; the Sanitarian's office does.

Commissioner Thompson called for clarification of Terry Nelson's request.

Commissioner Chilcott said the court decision says the classic use is to accommodate encroachment, a typical function of exemption. Terry said the Commissioners are interpreting the judges' decision to this case, which doesn't apply here. Terry also stated

state law says they can relocate boundaries. He cited State Law. James said MCA 7-63-511 reads "unless adopted to evade the law".

Terry said no public meetings were held to determine if more stringent regulations should be adopted. James said the Commissioners, 'shall consider all surrounding circumstances' when considering what has been submitted for approval. This is to determine how current subdivision regulations are being applied, not changes.

Terry said there were no issues with relocation boundaries; the Commissioners' actions seem to be asking for litigation. They are not doing what is best for the public; suddenly boundary relocations are shut down. Commissioner Thompson said he doesn't know that the court decision rendered is applicable here. Commissioner Chilcott added that he agrees with Terry about what difference it makes to anyone. The Missoula decision may not seem to be applicable here, but law interpretation is their job as elected officials. They see certain cases where boundary line exemptions are applicable, and others where they are not. Commissioner Lund cited George's letter referring to page 29 of the judges' opinion, as the type applied for by the plaintiffs, would create new lots, with a new address, they would lose street access. If you file with a subdivision on this, you have to follow with all the regulations. Commissioner Thompson said if Terry is going from three acres to eight acres, he is planning to come back with a subdivision to be considered.

Commissioner Chilcott said the request is to change a fence line.

Linda said her job is to research covenants and the activity around them, deed restrictions, and if landowners used an exemption. The Planning Department can make the final determination whether to accept an exemption. Commissioner Lund asked if Terry has done other relocations on this parcel. Linda said no, but Mr. Smith has. James said this is more Nedra's decision than the Commissioners'.

A neighbor said George Corn and James McCubbin seem to have conflicting opinions. Montana Code Annotated deals with boundary review. James said Counties and Cities should establish the criteria for reviewing subdivisions and boundaries. He and George are in agreement on this issue. The question is whether the request is for the purpose of evasion. Commissioner Chilcott asked why the Sanitarian's approval was requested. Terry said the additional land purchase is for the purpose of putting in a subdivision.

Commissioner Chilcott said originally the exemption was sought to increase landmass. Now you are establishing that you are trying to cut down the time frame for a subdivision. Terry said Mr. Smith doesn't want to do a subdivision. He felt they are not dealing with a new law, or new interpretation. Karen said the amount of land is the key issue. There is more land than the judge felt was appropriate for boundary line relocation. Commissioner Lund said this is Nedra's decision. Commissioner Chilcott directed Nedra to take the matter under review. Terry asked what to expect next, and James said the Clerk and Recorder's office would generate a letter to Terry.

In other business, the Board of County Commissioners met to discuss and decide relocation of boundaries, as requested by Steve and Donna Ralls, as well as a family transfer. The original request had been denied. They are trying to do a family transfer to the husband, Steve. Both presently hold the property; now they want to change it back to the wife's name. The Ralls are trying to refinance and can't; they are doing it for estate planning, to get a new loan on the property; a letter from the mortgage company stated it would be easier if it was a smaller parcel. Mrs. Ralls stated a family transfer can be made to a spouse. James said the prior history of a particular parcel, configuration, future exemptions, prior ownership, and exchange all affect the decision. Terry said parcel shape is a reason for refusal.

Mrs. Ralls said she would like to do estate planning and family transfers to keep the mortgage off half the property, which is a safety factor for her inheritance. She and her family are just farming. The request is for banking reasons and inheritance reasons, nothing more. Karen said the facts used by the Planning Department is that the property is held by both Mr. and Mrs. Ralls, so they could not use a family transfer exemption, and it appeared to be a possible evasion. It is an unusual configuration.

Mrs. Ralls said there was no evasion in mind: cows, horses, kids, and family. It keeps it safe for their kids. The Mortgage Survey takes the whole legal address. The bank grants loans on 40 acres. Commissioner Thompson said with a family transfer, the property is sold, and people could build on it. He asked if she and her husband would agree to put on a deed restriction that property could not be sold for so many years. Mrs. Ralls said she has no intention of selling. Linda said she doesn't understand the Mortgage Survey problem. When a mortgage is taken, they take only that portion of land. Commissioner Chilcott said the decision goes to Nedra, whose office will generate a letter with the decision.

In other business, the Commissioners met to discuss and decide on the relocation of a common boundary in Sec. 30, 7N, R19W (Knight Property). Commissioner Chilcott said the road is defined by an easement. Terry said it is, running east and west, rather than north and south. Karen said the letter was sent November 7, 2005. James said there is no change in public health and safety, access, or impact density. Commissioner Chilcott said the decision goes to Nedra, whose office will generate a letter with the decision.

In other business, the Commissioners met to discuss and decide on the relocation of a common boundary in Sec. 32, T7N, R19W, eight 20-acre parcels owned by Murray Derrington. Permission is being sought to take the parcels and reconfigure them to fit the road better. Terry said the Planning Department saw no problem with the configuration, but there may be other problems.

Linda said she was given nothing stating the acreage. Terry said the perfect situation is 20 acres, but each of these is slightly over 20 acres.

Commissioner Chilcott commented that some lots are not being served by any road. Terry said the owner wants to build on one lot, but has no intention of selling any. He

wants to reconfigure to fix the access problem. Commissioner Chilcott said the decision goes to Nedra, whose office will generate a letter with the decision.

In other business, the Board of County Commissioners met to discuss and decide on the Teresa Teague family transfer.

Terry said he has a letter from Mrs. Teague, describing her land with several buildings on it. There is currently a loan on it. Interest rates are rising and she cannot get a conventional loan with so many buildings on the property. She would like to split the property along the existing fence line, leaving one parcel where the house is, so the back property is separate. James pointed out that the property has four residences on it. Terry said they are all legally permitted.

Karen said their letter of October 19th, 2005, listed the reason for not allowing the exemption. There is a history of family transfer, where the property was ultimately sold. Presumption is that we can't do a family transfer if property is in single ownership. Terry said the family transfer created two parcels, but one owner. Boundary line relocation is based on where the neighbor built a shop over the line.

James expressed concern it would legitimize the existing violation.

Terry said the banks wouldn't grant a loan because of multiple housing on the property. The more convoluted it gets, the quicker the banks will run from it. He added there were no evasion criteria at the time the father sold what had been transferred to him. Therefore, that fact cannot be used as reason to deny the request.

Commissioner Chilcott noted the original parcel was reconfigured in 1998. Terry said this is a different parcel.

Commissioner Thompson said if the family transfer goes through, the number of septic systems and wells remains the same, and the parcel retains the same number of people. James said it would be more valuable land without other dwellings on it. Commissioner Chilcott said the decision goes to Nedra, whose office will generate a letter with the decision.

In other matters, the Board of County Commissioners met to discuss the lifting of the agricultural covenant on the Stevensville Gravel Pit property. Present for the meeting: Renee Van Hoven, Planning Department; David Ohnstad, Road Department; and James McCubbin, Deputy County Attorney. James explained the frontage part on Eastside Highway has an agricultural covenant on it; to eliminate any future misunderstanding the agricultural covenant should be removed from that portion of the property. Commissioner Lund made a motion to approve Resolution # 1790 to remove the agricultural covenant on the Stevensville Gravel Pit property, subject to purchase by the County. Commissioner Thompson seconded, and all voted 'aye'.

In other matters, The Board of County Commissioners met to discuss and decide on the enforcement of Willow Creek Voluntary Zoning District violations.

Present: George Corn, County Attorney; Karen Hughes, Planning Department; James McCubbin, Deputy County Attorney; several concerned neighbors.

George recommended that zoning restrictions be enforced. There are potential zoning violations, as well as County environmental issue violations.

Opportunity for public comment was given; none was forthcoming.

Commissioner Thompson said the original resolution mentions enforcement of violations. The building was built infringing on zoning space requirements, closer than the 50' designated. It causes a hazard because of lack of visibility to pull onto the highway. Several people have contacted the individual, but he continued with construction.

George said when someone continues in clear violation, it invites further violations. Commissioner Thompson said the individual was notified of the boundary line at a phase of construction where he could have stopped the construction and realigned the building on the property within boundary lines. He added the County should ask the attorney to move forward on the case. George said the County must consult with one more person, after which they can move to litigation.

Commissioner Chilcott asked if the County would be able to recover the costs to prosecute. George said that they hope to; they will require an expert witness and a surveyor.

Commissioner Lund asked who, from the County, viewed the property. George said Patrick O'Herren, Planning Department Director, viewed the property. Karen said Patrick generated a letter to Mr. Burgess on October 25th, 2005, stating that a setback violation appears to exist, as well as violations of subdivision and sanitation laws.

George said there could be other violations, in addition to zoning violations. James said there is a building currently being used to house a separate commercial business, with a bathroom hooked into an inadequate septic system. Commercial use is a zoning violation.

Commissioner Lund said the setback issue is sufficient to violate zoning.

George said there are also the septic issue, the lease and rent issue, and the commercial use issue. When the County files suit it will have several different arguments.

Commissioner Lund made a motion to request the County Attorney pursue civil enforcement of zoning where necessary, and determine if there are other violations evident on the property. Commissioner Thompson seconded the motion, and all voted 'aye'.

evident on the property. Commissioner Thompson seconded the motion, and all voted 'aye'.

In other business, the Board of County Commissioners met with John Bartos and Tim Engberg to discuss ambulance and emergency medical services in Ravalli County.